

On the Administrative Court's Motion for Constitutional Review of Statutes in Preliminary Relief Proceedings

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Abstract

If an administrative court concludes that the legal basis of administrative actions is unconstitutional in preliminary relief proceedings, should it suspend the proceedings and ask the Constitutional Court of the Judicial Yuan to review the constitutionality of statutes? The major purpose of the present study is to explore this difficult question in the overlapping area between constitutional and administrative litigation. The first part of this article reveals the problematic through several rulings of the Taipei High Administrative Court. The second part of this article explains that the Constitutional Court of the Judicial Yuan monopolizes the rejection competence for statutes according to the Constitution, the interpretation of the Judicial Interpretation No. 371 and the Constitutional Court Procedure Act. As observed in the third part of this article, administrative courts can fulfill the constitutional requirements for the effective judicial protection through preliminary relief proceedings. The fourth part of this paper analyzes two dilemmas that administrative courts will fall into if they strongly believe on reasonable grounds or suspect that the legal basis of administrative actions is unconstitutional in preliminary relief proceedings. Regarding the dilemmas encountered by administrative courts, the fifth part of this article proposes solutions. Finally, results of this research are summarized in the sixth part. In conclusion, if an administrative court is reasonably convinced that the legal basis of the administrative action is unconstitutional in preliminary relief proceedings, it should suspend the proceedings and ask the Constitutional Court of the Judicial Yuan to review the constitutionality of statutes. There are two

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exceptions: the statute is inapplicable in the principal proceedings, or the case is based on Paragraph 3 of Article 116 of the Code of Administrative Court Procedure. The deviation from the principle “judges shall be bound by law” must be corrected by the petition to the Constitutional Court of the Judicial Yuan for the constitutional review of legislation in the principal proceedings.

Keywords: constitutional litigation, Constitutional Court Procedure Act, administrative litigation, Code of Administrative Court Procedure, the Constitutional Court of the Judicial Yuan, administrative courts, preliminary relief, effective judicial protection